IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Date of decision: 04.11.2006

Criminal Appeal No. 232 of 2001
(Old No. 917 of 1985)

1. Om Prakash (since deceased)
   S/o Hukum Chand Sharma
   R/o Bankhandi, Nehru Gram
   P.S. Rishikesh
   District Dehradun.
2. Ram Kishan S/o Dharam Dass
   R/o Bankhandi, Rishikesh
   District Dehradun ….Appellants

Versus

State of Uttar Pradesh ….Respondent.

Shri Asif Ali, learned Amicus Curiae for the appellant.
Shri Rajeev Mohan Birkhani, learned A.G.A. for the State.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initial of Judge)

Date: 04.11.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the judge for signature.

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Hon'ble Prafulla C. Pant, J

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.,C.) is directed against the judgment and order dated 29.03.1985, passed by learned Additional Sessions Judge, Dehradun in Sessions Trial No. 44 of 1982, whereby accused/appellants Om Prakash and Ram Kishan have been convicted under Section 364 read with Section 34 of Indian Penal Code, 1860 (for brevity herein after referred as I.P.C) and each one of them has been sentenced to undergo rigorous imprisonment for a period of ten years.

2. Heard learned counsel for the parties.

3. Prosecution story in brief is that P.W. 1 Rakesh, a minor boy, aged 13 years, resident of Ghaziabad (who ran from his house), reached Rishikesh on 28.08.1981. He

was in possession of currency notes valued Rs. 1070/-. At about 11:45 P.M., P.W. 1 Rakesh engaged a three wheeler bearing registration No. U.T.L. 1450, to take him to Lakshaman Jhoola and also for the return journey there from. When the boy was traveling on the said three wheeler, accused/appellants Om Prakash and Ram Kishan, who had seen him near bus stand, that he was in possession of Rs. 1070/-, came in a taxi and stopped the three wheeler. It was 1:30 P.M. The taxi No. was UTL 7923. Both the accused alighted from the taxi and asked Rakesh (P.W. 1) to get down from the three wheeler. They asked him to sit in the taxi. P.W. 2 Atibal Prasad (taxi driver), when protested against the accused, he was threatened by them on the point of knife and asked him to drive the taxi. Thereafter, accused Om Prakash and Ram Kishan, took Rakesh to Nehru Gram and confined him in a room. They snatched Rs. 800/- from his pocket. According to prosecution, accused/appellants wanted to kill Rakesh. P.W. 2 Atibla Prasad, taxi driver, meanwhile lodged the First Information Report (Ext. A-1) with police station Rishikesh. Later, P.W. 3 Rakesh Kumar, a three wheeler wala also signed the said report after reaching at the police station. Crime No. 328 of 1981 was registered with police station against the accused/appellants Om Prakash and Ram Kishan relating to offence punishable Under Section 364 I.P.C., committed by them. On the very day, after taking up the investigation, the police recovered the boy from the custody of the accused/appellants from Nehru Gram from the house of one Hira Ram. The recovery memo (Ext. A-2) was prepared by the police. A separate memo (Ext. A- 3) of eight currency notes,

recovered from the possession of accused/appellant Ram Kishan was also prepared by the police at about 4:15 P.M on the very day i.e. 28.08.1981. After completion of the investigation, a charge sheet (Ext. A-10) was submitted by the police against both the accused/appellants before the Magistrate.

4. The Magistrate, it appears on receipt of charge sheet, after giving necessary copies to the accused persons, as required under Section 207 Cr.P.C., committed the case to the Courrt of Sessions for trial. Learned trial court after hearing the prosecution and the defence, framed charge of offence punishable under Section 364 read with Section 34 I.P.C. and that of one punishable under Section 368 read with Section 34 I.P.C. against both the accused/appellants Om Prakash and Ram Kishan, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Rakesh (the kidnapped boy), P.W. 2 Atibal Prasad (taxi driver), P.W. 3 Rakesh Kumar (three wheeler driver), P.W. 4 Shri B.S. Negi (Sub-Inspector), who recovered the boy after raiding the house from where the victim was concealed, and P.W. 5 H.S. Rathi (Sub-Inspector), who investigated the crime. The oral and documentary evidence was put to the accused/appellant under Section 313 Cr.P.C. in reply to which they alleged that the evidence adduced is false and they have been falsely implicated. The trial court after hearing the parties, found both the accused guilty of offence punishable under Section 364/34 I.P.C. only and after hearing on sentence, sentenced to each one of them to rigorous imprisonment for a period of ten years. Aggrieved by said judgment and

Order dated 29.03.1985, this appeal appears to have been filed in the year 1985 in the Allahabad High Court and received by transfer to this Court under Section 35 of Reorganisation Act, 2000, for its disposal.

5. P.W. 1 Rakesh, a young boy aged 13 years, has stated that after touring Aligarh and Meerut, he came to tour Rishikes. On the day of incident, he was in possession of Rs. 1070/-. When he reached bus station of Rishikesh, he made inquiry from a three wheeler wala that what would he charge for going to and coming back from Laxman Jhoola. Three wheeler wala asked for Rs. 30/-. On this, the witness states that he paid Rs. 30/- to said man. P.W. 1 Rakesh further states that while he was making payment to three wheeler wala, he was witnessed by the accused/appellants. According to the witness, it was 11:45 AM. At that time. P.W. 1 Rakesh further narrates that when he was coming back from Laxman Jhoola in the same three wheeler, at abut 1:30 P.M., the three wheeler was intercepted by a taxi in which accused/appellants on the point of knife made him to get down from three wheeler and took him in the taxi. The witness further states that accused/appellants snatched Rs. 800/- from him. The witness further states that after the accused/appellants, took him in a house and confined there, at about 4:00 PM., police came and they were arrested. In para-4 of the statement of P.W. 1 Rakesh (the victim) discloses that he is resident of Ghaziabad and he had ran away from his house after taking Rs. 1,600/-. He further clarifies that when he got down at Rishikesh bus stand. On reaching there, he saw accused Ram Kishan

Sitting in his betel shop who had seen him talking to three wheeler wala and making payment to him. This witness has also disclosed that the registration number of three wheeler was 1450.

6. P.W. 2 Atibal Prasad, taxi driver, has corroborated the prosecution story to the extent that the accused/appellants, hired his taxi for going towards Laxman Jhoola and on the way they stopped the above mentioned three wheeler. This witness further states that in his presence Rakesh (P.W. 1) was made to get down from three wheeler by accused/appellants and he was made to sit in the taxi. P.W. 2 Atibal Prasad, further states that he protested to the accused/appellants but on the point of knife, he was threatened. This witness has stated that he lodged First Information Report (Ext. A-1) of the incident with the P.S. Rishikesh after the boy and the accused persons got down in Nehru Gram.

7. P.W. 3 Rakesh Kumar, a three wheeler wala also corroborates the prosecution story, narrated by the victim (P.W. 1) that on 28.08.1981, he (victim) engaged the three wheeler registration No. UTL 1450 for going from bus stand Rishikesh to Laxman Jhoola and for return journey for Rs. 30/-. This witness admits that he was paid Rs. 30/- by P.W. 1. (Rakesh, the victim). P.W. 3 Rakesh Kumar (the three wheeler wala) further states that when he was bringing back the boy from Laxman Jhoola, he was intercepted by accused/appellants, who came in a taxi and forcibly made the boy get down from the three wheeler and forced him to sit in the taxi. P.W. 3 Rakesh Kumar

further states that after going to police station, Rishikesh, where the First Information Report was lodged by taxi driver, he also signed the same.

8. From the above evidence on record, this Court is in agreement with the finding of the trial court that the prosecution has been successful in proving the charge of offence punishable under section 364 read with Section 34 I.P.C. against accused/appellants.

9. Learned counsel for the appellants, argued that P.W. 1 Rakesh, has admitted that Rs. 240/- were lying in his pocket when he was recovered from the custody of the accused/appellants on 28.08.1981 at 4:00 P.M. In this connection, it is further submitted that had the accused/appellants harbouring any criminal intention they would not have left Rs. 240/- with the boy. In my opinion, there appears to be little force in the submission for the reason that it has nowhere come on the record that the entire amount was lying in a single pocket. I agree with the trial court in its observation that Rs. 240/- might be lying separately in other pocket, which were not noticed by the accused/appellants.

10. The next submission, advanced on behalf of the appellants by learned Amicus Curiae is that the currency notes, which were recovered from Ram Kishan, were not produced in the court and did not tally with the one mentioned in the recovery memo. Since accused/appellants have not been convicted under Section 392 I.P.C, or 379 I.P.C., non production of currency notes

does not make the difference as to the conviction of the appellants under Section 364/34 I.P.C.

11. Lastly, it is contended that the ingredients of the offence punishable under Section 364 I.P.C. are not made out from the prosecution story. The plain reading of said Section, shows that whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put him in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine. It has come in the evidence of P.W. 1 Rakesh (victim) that after he was decamped of Rs. 800/- from his pocket, the accused/appellants, talking among themselves one stating that he (victim) would be left to go by night train but the another uttered-“THIKANE LAGA DENGE” (we would kill him). This clearly indicates that life of the boy was put to in danger on being murdered. Had the taxi wala and three wheeler wala were no vigilant, it would have been difficult for the police to recover the boy on the very day and untoward incident might not have been averted.

12. For the reasons, as discussed above, the appeal is liable to be dismissed on the point of conviction. The same is dismissed. However, on the point of sentence, in the opinion of this Court rigorous imprisonment for a period of seven years would have met the ends of justice in the present case. Accordingly, the sentence awarded by the trial court is modified and reduced to rigorous

imprisonment for a period of seven years.

Accused/appellant Ram Kishan is on bail. His bail is cancelled. The trial court would take him into custody to make him serve out the unserved part of sentence. (Appeal of accused/appellant Om Prakash stands abated due to his death during the pendency of appeal).

Dt. 04.11.2006
S **(Prafulla C. Pnat, J.)**